

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 96-cr-108-01-JD

Emilio Encarnacion

**O R D E R**

Emilio Encarnacion has filed a "Leave To Proceed In Forma Pauperis" motion and a "Motion To Withdraw Voluntarily As Judge" in what he claims is a "writ of audita querela" action. There is no such writ pending here and thus no case or controversy and no subject matter jurisdiction to consider the motions.<sup>1</sup> They are both denied without prejudice.

**SO ORDERED.**

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James R. Muirhead  
United States Magistrate Judge

Date: September 20, 2005

cc: Terry L. Ollila, Esq.  
Bjorn R. Lange, Esq.

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<sup>1</sup>It is unclear what Encarnacion is seeking but the writ of audita querela is not available to a federal prisoner where the merits of his claims were addressed in a prior § 2255 petition. U.S. v. Miller, 8 Fed. Appx. 753 (9th Cir. 2001).